



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 080027

Petitioner Charles Clements applied to the Building Commissioner for permission to convert 42-44 Griggs Terrace from a two (2) unit dwelling to a three (3) unit dwelling by dividing his condominium unit at 42 Griggs Terrace into two separate units. The Building Commissioner denied the petitioner's application due to the fact that the proposed conversion violated the Zoning By-Law, and an appeal was taken to this Board.

On July 17, 2008 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals. The Board then fixed the date of August 21st, 2008 at 7:00 p.m. in Hunneman Hall on the second floor of the Main Library as the time and place of a hearing of the appeal. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of properties deemed by the Board to be affected as they appeared on the most recent local tax

list, to the Planning Board and to all others required by law. Notice of the hearing was published on August 7th and 14th, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
NOTICE OF HEARING

PETITIONER: **Charles Clements**

LOCATION OF PREMISES: **42 Griggs Terrace, BRKL**

DATE AND PLACE OF HEARING: Thursday August 21st, 2008 at 7:00 p.m. in the Main Library, 2nd Floor

A public hearing will be held for a Variance and/or special permits from:

1. **4.07; Table of Use Regulations, Principal Use #6, Variance Required.**
2. **5.09.2.k; Design Review, Special Permit Required.**
3. **6.02.1; Table of Off Street Parking Regulations, Variance Required.**
4. **6.04.4.f; Variance Required.**
5. **6.04.5.c.1; Variance Required.**
6. **6.04.9.b; Variance Required.**

7. 8.02.2; Alteration or Extension; Special Permit required of the Zoning By-Law to convert

premises into three Units as per plans at **42 Griggs Terrace, BRKL**

Said premises is located in a T-6 (Two Family) District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar

at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, or access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Co-ordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2330; TDD (617) 730-2327.

Enid Starr
Jessie Geller
Robert DeVries

At the time and place specified in the notice a public hearing was held by this Board. Present were Jesse Geller, Chairman, Enid Starr and Jonathan Book.

The Petitioner was represented by Attorney Jacob Walters of Goldenberg & Walters of Seven Harvard Street in Brookline. Mr. Walters began his remarks with a brief history of the 42-44 Griggs Terrace property. Mr. Walters stated that the property was built in the 1800's, and is believed to be the original home of the Griggs family. Mr. Walters added that throughout virtually all of its existence, the dwelling at 42-44 Griggs Terrace has been occupied as a three (3) family dwelling. Mr. Walters stated that although the structure is located in a T-6 Zoning District, it has been a three family dwelling long before the Zoning By-Law was enacted. Mr. Walters went on to say that approximately fifteen (15) years ago a former owner of the premises sought similar relief from the Zoning Board and was denied. Mr. Walters stated that it was fair to inquire what had changed during the past fifteen

years. Mr. Walters answered the question by saying that fifteen years ago the property was not owner occupied, was in significant disrepair and the application was opposed by virtually all the neighbors. Mr. Walters added that the former owner did not present any plans to renovate or preserve the dwelling nor were grounds for a variance presented to the Board. In contrast, Mr. Walters pointed out that the petitioner and his family live at 42 Griggs Terrace and plan to remain. In addition, the petitioner proposes to make substantial renovations to the dwelling and has the support of every home in the neighborhood. Mr. Walters also stated that grounds for a use variance exist.

Mr. Walters stated that the structure contains 8,500 square feet of habitable living space, 5,500 of which are contained in the 42 Griggs Terrace Unit owned by the petitioner. Mr. Walters added that the 42-44 Griggs Terrace dwelling was unique in the neighborhood in that it is the only three family dwelling and was by far the largest most massive structure in the zoning district. Mr. Walters further stated that given the size and shape of the structure on the lot, a literal enforcement of the By-Law would create a substantial hardship upon the applicant. Mr. Walters went on to state that Section 9.09.1.d of the Brookline Zoning By Law lends support to the grant of a variance in this case. Mr. Walters quoted the relevant portion of Section 9.09, which states: “*Existence on a lot in question of a structure compatible with the vicinity in its appearance and is of either historical or architectural significance which shall be preserved or restored in a manner sufficient to justify the relief granted.*” Mr. Walters indicated that the 42-44 Griggs Terrace is compatible with the surrounding buildings albeit larger than any other dwelling in the district, and is both historically and architecturally significant. Mr. Walters added that the petitioner proposes a number of renovations needed to preserve and maintain the structure and outlined them as follows: (1) scraping and painting of exterior of building, including window sills, (2) installation of a new roof, (3) removal and replacement of existing gutters, (4) repaving of driveway and installation of drainage system, (5) repair and replacement where needed of back porch and stairs, (6) installation of insulation in attic,

(7) pointing and repair to all four chimneys, (8) removal of existing rear yard fence and installation of new fence. Mr. Walters stated that the renovations as outlined would allow the applicant to preserve the structure and was sufficient under Section 9.09 of the Zoning By-Law to justify the relief granted.

Mr. Walters stated further that if allowed to convert the existing two unit condominium into three units, the applicant intended to sell the third unit to the existing tenants. The tenants have lived at 42 Griggs Road for three years and very much desire to purchase the newly created unit. Mr. Walters added that the tenants have become a part of the community and their ownership of a third condominium unit would have no impact upon the neighborhood. Mr. Walters stated that the petitioner intends to use the proceeds of the sale of the third condominium unit to fund the renovations as outlined above, and added that the owner of 44 Griggs Terrace is prepared to contribute that Unit's share toward the needed improvements. Mr. Walters referenced a letter of support from the owner of 44 Griggs Terrace in which it is mentioned that there is over \$100,000 of deferred maintenance that can be addressed by the granting of the requested relief. Mr. Walters stated that after the renovations have been made, the creation of a third unit will greatly assist in future preservation of the structure as each unit will contribute to a condominium reserve fund to address future repairs and maintenance. In response to a question from the Board, the petitioner stated that, at present there is no condominium reserve.

Mr. Walters then addressed other relief that would be needed, citing a variance from Section 6.02.1 parking space requirements. Mr. Walters stated the proposed parking shows six (6) parking spaces where the By-Law requires seven (7). Mr. Walters stated that given the size and shape of the 42-44 Griggs Terrace structure on the lot, there is simply not any additional room to provide a seventh parking space. Mr. Walters then stated that three special permits would also be required, one under Section 6.04.12, to waive dimensional requirements for parking spaces, another under Section 5.09.2.k and a final Special Permit pursuant to Section 8.02.2. Mr. Walters stated that as to the

parking, Section 6.04.12 allows the waiver of certain dimensional requirements where parking is being provided for existing structures. Mr. Walters went on to say that the Planning Board had approved the design required under Section 5.09.2.k and concluded the recitation of relief needed by saying that the front and side yard setback requirements were pre-existing and not being increased but would need a Special Permit pursuant to Section 8.02.2.

Mr. Walters concluded his remarks by suggesting to the Board that the only practical way for the applicant to maintain and preserve the unique structure was by allowing the creation of a third condominium unit. Mr. Walters suggested that relief could be granted pursuant to the Brookline Zoning By-Law and reminded the Board that every neighbor possibly affected by the requested relief had written a letter of support for the proposal. Mr. Walters submitted one additional letter of support, from Dr. Donald Lipsett of 15 Griggs Road.

The Chairman then asked if any members of the public wished to speak in favor of or in opposition to the applicant's proposal. Sheri and Stephen Gaehda of 7 Griggs Terrace indicated that they were in favor of the proposal. No one spoke in opposition to the proposal.

The Chairman then called upon Lara Curtis of the Brookline Planning Department to present the Planning Board report. Ms. Curtis stated that a majority of the Planning Board recommended approval of the requested zoning relief, having found that the proposed renovation satisfies the criteria of Section 9.09.1.d of the Zoning By-Law. Ms. Curtis stated that the Planning Board did not object to the waiver of one parking space and approved the design pursuant to Section 5.09.2.k. In closing, Ms. Curtis indicated that the Planning Board recommends approval of the plans for "42-44 Griggs Terrace, Brookline MA 02446" prepared by John Hagan Architect and dated March 20, 2008 subject to the following conditions:

1. Prior to the issuance of a building permit, the Condominium

Association shall submit plans showing proposed future Improvements to the property and the exterior of the building with preservation of all architecturally historic façade details, subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, a final site plan, including parking locations for six cars and indicating driveway regrading, resurfacing and drainage shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals Decision, (1) a final site plan stamped and signed by a registered engineer or professional land surveyor, and (2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard the Brookline Building Commissioner. Mr. Shepard stated that he had concerns about the relief and noted that normally a use variance under Section 9.09.1.d is granted for a structure such as a carriage house or historic barn that unless converted to housing will be demolished. Mr. Shepard also noted that while the 42-44 Griggs Terrace structure has been used as a three family dwelling for many years, it has not, been a legal three family. Mr. Shepard concluded by suggesting that if the Board saw fit to grant the requested relief, that the applicant be obliged to have his architect submit a building code analysis for all the changes being proposed, to verify the cost implications of the conversion and to be sure the building code is being met in all respects.

The Board then began its deliberations. Board member Enid Starr stated that she was in favor of granting the requested relief and said since the building was used as a three family dwelling prior to the enactment of the Zoning By-Law, she regarded the use as prior non-conforming one. Ms. Starr added that she felt the parking relief was warranted as were the required Special Permits given the structure and proposed preservation of the same. Mr. Book stated the he supported the project and the relief requested. The Chairman stated that he had questions concerning Section 9.09.1.d of the Zoning By-Law and noted that the paragraph relied upon also stated: “and which can reasonably be maintained as a visual and taxable asset only if a non-conformity of use is permitted.” The Chair then asked if, in fact, the dwelling could be maintained as a visual and taxable asset if the relief were denied. Counsel for the petitioner responded to the Chair’s question by stating that the petitioner has, during his ownership of the property made a number of repairs and improvements and despite expending a significant amount of time and money finds the structure requiring over \$100,000.00 worth of deferred maintenance. Counsel added that while there are individuals with unlimited financial means who would be able to maintain and preserve the structure, the By-Law contains the modifying phrase “reasonably maintained” and Counsel suggests that 99.9% of the population would not be able to heat, preserve and maintain a 5,500 square foot condominium contained in a 100 plus year old building. The Chairman indicated his support for the relief granted, with the imposition of an additional condition as suggested by the Building Commissioner.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant all the special permit relief requested and made the following findings pursuant to Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.

- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously to grant variances from Section 4.07, Use #6 pursuant to Section 9.09 and M.G.L. Chapter 40A, Section 10 and Section 6.02.1 pursuant to Chapter 40a, Section 10, and the requested special permits subject to the conditions set forth below. The Board specifically found that the size and shape of the structure and the proposed preservation and maintenance of the dwelling constituted sufficient grounds to justify the grant of a use variance.

Accordingly, the Board unanimously grants the variances and special permits as noted, subject to the following conditions:

1. **Prior to the issuance of a building permit, the Petitioner shall submit plans showing proposed future improvements to the property and the exterior of the building with preservation of all architecturally historic façade details, subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to the issuance of a building permit, a final site plan, including parking locations for six cars and indicating driveway regrading, resurfacing and drainage shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals Decision, (1) a final site plan stamped and signed by a registered engineer or professional land surveyor, and (2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

4. Prior to the issuance of a building permit, the Petitioner's shall submit to the **Building Commissioner** a building code analysis prepared by a Registered Architect for all proposed changes, showing conformance to the Building Code or, to the extent not in conformance, alterations required to be made to bring the building into conformity in connection with conversion of the building to a three family structure.
5. All parking spaces on the property shall be dedicated for the use of the occupants of the building thereon.



Jesse Geller, Chairman

Filing Date: September 5, 2008

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals